Supreme Court, U.S.
FILED

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NO. _____

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1995

THOMAS T. SCAMBOS,

Petitioner,

vs.

JACK G. PETRIE, and
ROBERT WATSON,
in their individual capacity,

Respondents,

On Petition For Writ Of Certiorari
To the United States Court Of Appeals
For the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

Thomas T. Scambos, Jr.
19400 Walnut Hills Road
Jeffersonton, Virginia 22724

Dated: July 20, 1996

25 pp

QUESTIONS PRESENTED

1. Whether the documents filed by the defendants were properly executed.

2. Whether the statutes enacted by Congress have a clear unambiguous meaning in this instance.

3. Whether government employees, or any court can change the meaning of a statute.

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JURISDICTIONAL STATEMENT

This petition for certiorari, filed pursuant to 28 U.S.C. § 1254 (1), seeks review of the Fourth Circuit Court of Appeal's Opinion in this case, filed on April 22, 1996, reported as Case No. 95-2980. (See attached Appendix)

STATUTORY PROVISIONS

This case simply involves the clear reading of statutes relied on by the petitioner, and the interpretation, in complete contradiction to this Court's holdings, by the lower courts. Title 26 U.S.C. § 6065 was enacted by Congress with the following words:

> **Sec. 6065. Verification of returns.**
>
> Except as otherwise provided by the Secretary, any return, declaration, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall contain or be verified by a written declaration that it is made under the penalties of perjury.

Obviously the words chosen by Congress to place in that statute were intended to reflect their intent and purpose.

Clearly the intent was to recognize the complexity of the internal revenue laws and charge any person or entity with the responsibility to insure that the documents they executed were true and correct as to every material matter, whether government or citizen.

Section 6020 was likewise enacted by Congress for the purpose as stated in that statute as follows:

> **Sec. 6020. Returns prepared for or executed by Secretary.**
> (a) Preparation of return by Secretary.
> If any person shall fail to make a return required by this title or by regulations prescribed thereunder, but shall consent to disclose all information necessary for the preparation thereof, then, and in that case, the Secretary may prepare such return, which, being signed by such person, may be received by the Secretary as the return of such person.
>
> **(b) Execution of return by Secretary.**
> (1) Authority of Secretary to execute return. If any person fails to make any return required by an internal revenue law or regulation made thereunder at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the Secretary shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise.
> (2) Status of returns. Any return so made and subscribed by the Secretary shall be prima facie good and sufficient for all legal purposes.

Section 1361 of Title 28 U.S.C. was clearly enacted by Congress to insure that the other statutes were scrupulously followed. Section 1361 contains the following words:

> The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.

STATEMENT OF THE CASE

This is a case whereas the petitioner sought to determine if the District Court would indeed compel government employees to enforce the laws enacted by Congress. The defendant government employees were operating outside the authority of the Federal laws governing their scope of employment. Instead of accepting the Federal laws as they were written, the lower courts through judicial legislation, determined that 28 U.S.C. § 1361 really did not mean what was clearly written, but was merely a request for a Writ of Mandamus.

A. Statement of Facts.

This case arises from a request by the Petitioner, by letter to enjoin the defendants from activities clearly outside the scope of their employment. The request was ignored and this action followed. Because it was apparent that the defendants were operating outside the scope of their employment, the Petitioner demonstrated with authority that they were ineligible for representation by the Department of Justice.

B. Procedural Background.

Because of the complexity of the internal revenue laws, Congress provided numerous safeguards before property could be taken from the people under authority of those laws. The Secretary reaffirmed through regulation that taking of property without due process of law was in

violation of the Fifth Amendment to the United States Constitution. The clear violation of those safeguards was the purpose of the suit filed in the District Court for the Eastern District of Virginia.

C. Argument. Statutory Construction.

The facts of this case raise the following questions:

(a) whether documents filed by the defendants were properly executed.
(b) whether the statutes enacted by Congress have a clear unambiguous meaning.
(c) whether government employees, or any court can change the meaning of a statute.

Since 1897, this Court has consistently ruled that where the words of a statute are unambiguous, statutory construction is at an end. In 1996, this Court confirmed their consistent rulings that a statute means what it says and courts cannot rewrite a statute. This Court has certainly made a statement concerning statutory construction that has endured for almost 100 years. Because of that truth, it is inconceivable that this Court would rule contrary to the clear meaning of the 46 words in 26 U.S.C. § 6065. The words of the body of the statute must endure in spite of various attempts to change its meaning by claiming the title supersedes the body of the statute. Such a claim is defeated by 26 U.S.C. § 7806 which precludes descriptive matter in a statute from giving any legal effect. The documents executed by the defendants in this case were not in accordance with § 6065.

D. Argument. Authority to Issue Notices of Deficiency, Levy and Liens.

The United States Congress as noted by this Court in 1897, is presumed to "presumed to know the meaning of the

words and the rules of grammar", U.S. v. Goldenberg, et al., 168 U.S. 95, 102 (1897). In accord with that presumption, Congress wrote 26 U.S.C. 6331 with the following words:

> **Sec. 6331. Levy and distraint.**
> **(a) Authority of Secretary.**
> If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334) belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. Levy may be made upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia, by serving a notice of levy on the employer (as defined in section 3401(d)) of such officer, employee, or elected official.

Section 6331 (d) reiterates the authority of the levy by referring to subsection (a):

> **(d) Requirement of notice before levy.**
> (1) In general. Levy may be made under **subsection (a)** upon the salary or wages or other property of any person with respect to any unpaid tax only after the Secretary has notified such person in writing of his intention to make such levy. (emphasis added)

Certainly if Congress had intended for the "levy" to apply to **any person in this country,** they would have written the

statute to reflect that intention. Instead, they wrote that levy may be made on any person **under subsection (a).** A review of subsection (a) identifies those subject to the levy.

This Court has ruled for almost 100 years that the words in a statute must be taken as they were written. In § 6331 (d), it is written that "Levy may be made under **subsection (a)** upon the salary or wages or other property of any person".

It may be misleading, but it certainly is not ambiguous. This Court has consistently stated:

> The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he has used. **He is presumed to know the meaning of the words and the rules of grammar.** U.S. v. Goldenberg, et al., 168 U.S. 95, 102 (1897). (emphasis added)

> In view of other settled rules of statutory construction, which teach that a law is presumed, in the absence of clear expression to the contrary, to operate prospectively; that, **if doubt exists as to the construction of a taxing statute, the doubt should be resolved in favor of the taxpayer,** we feel bound to hold that the Joint Resolution of 1931 and § 803 (a) of the Act of 1932 apply only to transfers with reservation of life income made subsequent to the dates of their adoption respectively. Hassett v. Welch., 303 US 303, pp. 314 - 315, 82 L Ed 858. (1938)(emphasis added)

> In construing federal revenue statute, Supreme Court gives no weight to Treasury Regulation which attempts to add to statute something which is not there. United States v Calamaro (1957) 354 US 351, 1 L. Ed 2d 1394, 77 S Ct 1138 (1957)

Going behind the **plain language of a statute** in search of a possibly contrary congressional intent is "a step to be taken cautiously" even under the best of circumstances. Piper v Chris-Craft Industries, Inc., 430 US 1, 26, 51 L Ed 2d 124, 97 S Ct 926 (1977). (emphasis added)

When we find the terms of a statute unambiguous, judicial inquiry should be complete except in rare and exceptional circumstances. Demarest v Manspeaker, 498 US 184, 112 L Ed 2d 608, 111 S Ct 599 (1991)

The argument is meritless in this case, though, for this principle of statutory construction applies only when the meaning of a statute is in doubt, see Noerr, supra, and here "the **statutory language is unambiguous,**" ante, at ____, 127 L Ed 2d, at 111. Now v. Scheidler, 510 US ____, p. ____, 127 L Ed 2d 99, pp. 112 (1994). (emphasis added)

In a statutory construction case, the beginning point must be the **language of the statute**, and when a statute speaks with clarity to an issue, judicial inquiry into the statute's meaning--in all but the most extraordinary circumstance--is finished; **courts must give effect to the clear meaning of statutes as written.** Estate of Cowart v. Nicklos Drilling Co., 505 US ____, 120 L Ed 2d 379, 112 S Ct 2589 (1992) (emphasis added)

When the words of a statute are unambiguous, the first canon of statutory construction--that courts must presume that a legislature **says in a statute what it means and means in a statute what it says** there--is also the last, and judicial inquiry is complete. Connecticut National Bank v. Germain, 503 US ____, p. ____, 117 L.Ed 2nd 391(1992) (emphasis added)

> Judges "are not at liberty to pick and choose among congressional enactments, and when two [or more] statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective." Morton v Mancari, 417 US 535, 551, 41 L Ed 2d 290, 94 S Ct 2474 (1974). County of Yakima v. Yakima Nation, 502 US ____, p. ____, 116 L Ed 687 (1992)

> When the terms of a statute are unambiguous, judicial inquiry is complete except in rare and exceptional circumstances. Freytag v. Commissioner, 501 US 868, 115 L Ed 2d 764, 111 S Ct 2631 (1991)

> "courts do not resort to legislative history to cloud a statutory text that is clear" Ratzlaf v. United States, 510 US ____, p. ____, 126 L Ed 2d 615 (1994).

> The United States Supreme Court, by denying the existence of an ambiguity in some federal statutory language, does not claim to be perfectly certain that the court has defined Congress' intentions as to a particular situation, but the court's task is not the hopeless one of ascertaining what the legislators who passed the law **would have decided had they reconvened** to consider the parties' particular case; rather, the court's task is **to determine whether the language the legislators actually enacted has a plain, unambiguous meaning.** Beecham v. United States, 511 US ____, p. ____, 128 L Ed 2d 383 (1994). (emphasis added)

It is to be noted that this Court declared that it was not their task to determine what the legislators would have decided on this particular matter, but what the legislators ACTUALLY ENACTED. Of course, there is no doubt that the enactments at issue here are not ambiguous. The very

next year this Court again clearly stated their intention that the words of a statute must be accepted as they are written:

> Judicial analysis in a case involving statutory construction should begin with the language of the statute, for when a statute speaks with clarity to an issue, judicial inquiry into the statute's meaning, in all but the most extraordinary circumstances, is finished. Metropolitan Stevedore Co. v. Rambo, 515 US ____, 132 L Ed 2d 226, 115 S Ct ____ (1996).

Because of the constant identical rulings by this Court for almost 100 years, it is inconceivable that the lower Courts have not found in total agreement with those decisions. For whatever reasons, they appear to react to another calling not consistent with the enacted laws of Congress and the rulings of this Court. If there was ever any doubt as to this Court's position on the content of a statute, just a few months ago it was again written so plainly that there can be no room for further discussion. In January of 1996, this Court stated:

> the United States Supreme Court is **bound by the language of the statute as it is written;** even if a different statutory construction advocated by a taxpayer might accord with good policy, **the Supreme Court is not at liberty to rewrite the statute because the Supreme Court might deem the statute's effects susceptible of improvement.** Commissioner v. Lundy, 516 US____, 133 L Ed 2d 611, 116 S Ct ____(January 17, 1996) (emphasis added)

Crowning dozens of decisions, this Court has declared in Commissioner v. Lundy, supra, once and for all that the legislators make the laws and not the courts.

E. Argument. The statutes cannot be rewritten by the courts.

This Court has verified that it "says in a statute what it means and means in a statute what it says", Connecticut National Bank v. Germain, supra. Obviously this means that 26 U.S.C. § 6331 means exactly what was written by Congress. Furthermore, this means that § 6065 means exactly what was written. In addition, this means that 28 U.S.C. § 1361 means exactly what was written by Congress. It DOES NOT mean that the Petitioner was requesting a "Writ of Mandamus" as found by the lower courts. Section 1361 means that, "the United States Supreme Court is bound by the language of the statute as it is written", and the following was written:

> The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.

Very few statutes declare jurisdiction therein, as § 1361. The district court had original jurisdiction, the record clearly demonstrated that the employees DID NOT perform their duty. The duty was to perform ministerial duties in accordance with the valid internal revenue laws.

The record in this case shows that the defendants made no effort to deny the allegations set forth in the Complaint. The defendants were operating outside the scope of their employment. Therefore, they had no right to representation by the Department of Justice. The only defense offered by the Justice Department was 26 U.S.C. § 7421. There would be no need for any other law in the Internal Revenue Code if § 7421 was beyond defeat. Section 7421 cannot be applicable until all other lawful procedures are followed. The remainder of the statutes in Title 26 U.S.C. cannot be declared surplusage because of the might of § 7421. Such

was the obvious purpose of Title 28 § 1361, to compel government employees to perform their duty.

CONCLUSION

This Court has stated that when the laws are clear and unambiguous, they say what they mean and mean what they say. The Petitioner has relied on the plain meaning of the laws and authorities as stated in his pleadings and as previously held by this Court In accordance with that doctrine petitioner requests that this Petition for Certiorari be granted.

Respectfully resubmitted on this 12 day of September 1996.

Thomas T. Scambos, Jr
19400 Walnut Hills Road
Jeffersonton, Virginia 22724